

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Thomas Pelzer, #311633, )  
Plaintiff, ) C/A No. 2:09-2559-MBS  
vs. )  
Leroy Cartledge, T. Holliday, Ms. McBride, )  
Ms. Freeman, and Jon Ozmint, )  
Defendants. )

2010 APR 13 P 1:11  
DISTRICT COURT OF SOUTH CAROLINA  
ORD E R

**ORD E R**

Plaintiff Thomas Pelzer is an inmate in custody of the South Carolina Department of Corrections (SCDC). Plaintiff is housed at the Perry Correctional Institution in Pelzer, South Carolina. Plaintiff, proceeding pro se, filed a complaint on October 1, 2009, asserting that Defendants have violated his constitutional rights in various respects. Plaintiff brings this action pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. On February 25, 2010, Plaintiff filed a motion for voluntary dismissal without prejudice. Defendants filed no response in opposition to Plaintiff's motion. On March 24, 2010, the Magistrate Judge issued a Report and Recommendation in which he recommended that Plaintiff's motion be dismissed with prejudice. Plaintiff filed objections on April 2, 2010, reiterating that he seeks a dismissal without prejudice.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is

made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Fed. R. Civ. P. 41(a)(2) provides:

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge except as to his recommendation that the case be dismissed with prejudice. The within action is dismissed *without prejudice* pursuant to Rule 41(a)(2).

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
United States District Judge

Columbia, South Carolina

April 12, 2010

**NOTICE OF RIGHT TO APPEAL**

**Plaintiff is hereby notified that he has the right to appeal this order  
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**